



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

DEC 08 2015

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

IN THE MATTER OF: TWO BROTHERS RACING, INC.

Two Brothers Racing, Inc.  
401 South Grand Ave.  
Santa Ana, CA 92705

ATTENTION: Craig Erion

**Request for Information under Section 208(a) of the Clean Air Act, 42 U.S.C. § 7542(a)**

The United States Environmental Protection Agency (EPA) hereby requires Two Brothers Racing, Inc. (TBR) to submit certain information as part of an EPA investigation to determine TBR's compliance with Section 203 of the Clean Air Act (CAA), 42 U.S.C. § 7522, and the applicable regulations at 40 C.F.R. Parts 85, 86, 1051, and 1068. Examples of vehicles regulated under these Parts include, but are not limited to, highway motorcycles, off-highway motorcycles, and all-terrain vehicles. Exhibit B specifies the information that you must submit. Exhibit C provides instructions for your response to this request, and Exhibit D provides definitions for some of the terms used in this request.

We are issuing this Request for Information (Request) under Section 208(a) of the CAA, 42 U.S.C. § 7542(a). Under Section 208(a) of the CAA, EPA may require any person who is subject to the CAA to provide information necessary to determine whether the person has acted in compliance with these requirements and the regulations promulgated thereunder.

You must submit responses to this Request for Information within 30 calendar days from the date you receive this letter.

Failure to provide the required information may result in the initiation of a civil action pursuant to Section 205(b) of the CAA, 42 U.S.C. § 7524(b). Failure to provide all requested information in its entirety, and in the format requested, may result in additional inquiries and penalties. It is important that your responses be clear, accurate, and complete. We will regard submitted information that is misleading, false, incomplete, or submitted without regard to its accuracy as a violation of the CAA and/or criminal statutes. We may use any information submitted in

response to this Request for Information in an administrative, civil or criminal action.

Finally, TBR must submit all requested information under an authorized signature with the following certification (provided in Exhibit F):

I certify under penalty of law that I have examined and am familiar with the information in the enclosed documents, including all attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are, to the best of my knowledge and belief, true and complete. I am aware that there are significant penalties for knowingly submitting false statements and information, including the possibility of fines or imprisonment pursuant to Section 113(c)(2) of the Clean Air Act, 42 U.S.C. § 7413(c)(2), and 18 U.S.C. §§ 1001 and 1341.

You are entitled to assert a business confidentiality claim covering all or part of the information you submit in response to this Request for Information, in accordance with the procedures described in the Confidentiality of Business Information (CBI) regulations, 40 C.F.R. Part 2, Subpart B. However, no such CBI claim may be made with respect to emissions data as defined at 40 C.F.R. § 2.301(a)(2). You must specify the page, paragraph and sentence when identifying the information subject to your claim. Exhibit A specifies the assertion and substantiation requirements for business confidentiality claims. EPA may, without further notice, provide the public with any information not subject to a CBI claim.

Please submit all requested information, via courier service or overnight delivery, to:

Kathleen H. Johnson, Director, Enforcement Division  
Attn: Andy Zellinger, Environmental Protection Specialist  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne St. (ENF-2-1)  
San Francisco, CA 94105

Any questions concerning this Request for Information should be directed to Andy Zellinger at 415-972-3093 or [Zellinger.Andrew@epa.gov](mailto:Zellinger.Andrew@epa.gov) or your attorney may contact David Kim of EPA's Region 9 Office of Regional Counsel at 415-972-3882.

Dec. 7, 2015  
Date

  
for Evan Bolser  
Phillip A. Brooks, Director  
Air Enforcement Division

## EXHIBIT A

### CONFIDENTIAL BUSINESS INFORMATION

You may assert a business confidentiality claim covering all or part of the information you provide in response to this Request for Information for any business information entitled to confidential treatment under Section 208(c) of the CAA, 42 U.S.C. § 7542, and 40 C.F.R. Part 2, subpart B. Under Section 208(c) of the CAA, you are entitled to confidential treatment of information that would divulge methods or processes entitled to protection as trade secrets. Under 40 C.F.R. Part 2, subpart B, business confidentiality means "the concept of trade secrecy and other related legal concepts which give (or may give) a business the right to preserve the confidentiality of business information and to limit its use or disclosure by others in order that the business may obtain or retain business advantages it derives from its rights in the information." See 40 C.F.R. § 2.201(e).

Information covered by a claim of business confidentiality will be disclosed by EPA only to the extent, and by means of the procedures, set forth in Section 208(c) of the CAA and 40 C.F.R. Part 2, subpart B. EPA will construe your failure to furnish a business confidentiality claim with your response to this Request for Information as a waiver of that claim, and the information may be made available to the public without further notice to you.

To assert a business confidentiality claim, you must place on (or attach to) all information you desire to assert as business confidential either a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as "trade secret," "proprietary," or "company confidential" at the time you submit your response to this Request for Information. Allegedly confidential portions of otherwise non-confidential documents should be clearly identified, and may be submitted separately to facilitate identification and handling by EPA. You should indicate if you desire confidential treatment only until a certain date or until the occurrence of a certain event.

The criteria EPA will use in determining whether material you claim as business confidential is entitled to confidential treatment are set forth at 40 C.F.R. §§ 2.208 and 2.301. These regulations provide, among other things, that you must satisfactorily show that: (1) the information is within the scope of business confidentiality as defined at 40 C.F.R. § 2.201(e), (2) that you have taken reasonable measures to protect the confidentiality of the information and that you intend to continue to do so, (3) the information is not and has not been reasonably obtainable by legitimate means without your consent, and (4) the disclosure of the information is likely to cause substantial harm to your business' competitive position. See 40 C.F.R. § 2.208 (a)-(e). Emission data, as defined at 40 C.F.R. § 2.301(a)(2), is expressly not entitled to confidential treatment under 40 C.F.R. Part 2, subpart B. See 42 U.S.C. § 7542(c); 40 C.F.R. § 2.301(e).

If you assert a claim of business confidentiality in connection with information and documents forwarded in response to this Request for Information, in accordance with 40 C.F.R. § 2.204(c)(4), EPA is requesting that you answer the following questions with respect to any information or document for which you assert a claim of business confidentiality:

1. What specific portions of the information are alleged to be entitled to confidential treatment? Specify by page, paragraph and sentence when identifying the information subject to your claim.
2. For what period of time do you request that the information be maintained as confidential, e.g., until a certain date, until the occurrence of a specified event or permanently? If the occurrence of a specific event will eliminate the need for confidentiality, specify that event. Additionally, explain why the information should be protected for the time period you've specified.
3. What measures have you taken to protect the information claimed as confidential from undesired disclosure? Have you disclosed the information to anyone other than a governmental body or someone who is bound by an agreement not to disclose the information further? If so, why should the information still be considered confidential?
4. Is the information contained in any publicly available material such as the Internet, publicly available databases, promotional publications, annual reports or articles? Is there any means by which a member of the public could obtain access to the information? Is the information of a kind that you would customarily not release to the public?
5. Has any governmental body made a determination as to the confidentiality of the information? If so, please attach a copy of the determination.
6. For each category of information claimed as confidential, explain with specificity whether disclosure of the information is likely to result in substantial harm to your competitive position. Explain the specific nature of those harmful effects, why they should be viewed as substantial, and the causal relationship between disclosure and such harmful effect. How could your competitors make use of this information to your detriment?
7. Is there any other explanation you deem relevant to EPA's determination of your business confidentiality claim that is not covered in the preceding questions? If so, you may provide such additional explanation.

You must furnish comments to the above questions concurrent with your response to this Request for Information if you have claimed any information as business confidential. See 40 C.F.R. § 2.204(e)(2). Pursuant to 40 C.F.R. § 2.205(b)(2), you may request an extension of this deadline. EPA will construe your failure to furnish timely comments as a waiver of your confidentiality claim, consistent with 40 C.F.R. § 2.204(e)(1). Please submit your comments to:

Andy Zellinger, Environmental Protection Specialist  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne St. (ENF-2-1)  
San Francisco, CA 94105

Pursuant to 40 C.F.R. § 2.205(c), you are hereby advised that information you submit as part of your comments may be regarded by EPA as entitled to confidential treatment if, when it is received by EPA, it is marked in accordance with 40 C.F.R. § 2.203(b). As required by 40 C.F.R. § 2.204(e)(6), you may assert a business confidentiality claim covering all or part of your response to these questions, as provided in 40 C.F.R. § 2.203(b). Information covered by such a claim will be disclosed by EPA only to the extent, and by means of the procedures, set forth in Section 208(c) of the CAA and 40 C.F.R. Part 2. EPA will construe the failure to furnish a confidentiality claim with your comments as a waiver of that claim, and the information may be made available to the public without further notice to you.

## EXHIBIT B

### REQUEST FOR INFORMATION FOR TWO BROTHERS RACING, INC.

TBR must submit the following information to the United States Environmental Protection Agency pursuant to Section 208 of the CAA, 42 U.S.C. § 7542.

1. Identify each exhaust system or exhaust system component (collectively "component") sold or offered for sale by TBR during the period from January 1, 2013, through the date of this letter for the following types of vehicles:
  - Model year 2013 and later motorcycles that were originally designed and built by the motorcycle manufacturer for use on public roads. This includes all vehicles labeled as covered by an EPA-issued certificate of conformity.

The list of such components must include, but is not limited to, those identified on TBR's website at [www.twobros.com/Road.htm](http://www.twobros.com/Road.htm) and all related pages.

This Request for Information pertains to all components described herein regardless of any claims made by TBR that a particular component is designed for use in closed course competition and is not intended for any other use, or other similar claims.

2. For each component identified in response to Question 1:
  - a. State the part number and identifying name, and specify the vehicle applications by make, model, and year. The list of components provided by TBR must be organized by the categories: vehicle manufacturer, model, and year, as shown in Exhibit E.
  - b. Describe the function of the component and identify any and all means the component uses to reduce vehicle exhaust emissions including, but not limited to, catalysts and ports that allow for the use of oxygen sensors. Also identify whether and how this component permanently or temporarily: changes, affects, bypasses, turns on, turns off, renders inoperative, facilitates the removal of, modifies, replaces or simulates the operation of a vehicle's proper functioning of any part of the emissions control system installed on the vehicle by the original vehicle manufacturer. In instances where multiple components have been or are currently offered for sale for a motorcycle of a single model year, describe how the component designs, properties, and operational parameters or characteristics differ. Also describe how the component designs, properties, and operational parameters or characteristics differ from one year to the next.
  - c. Provide copies of all documentation for each component, including, but not limited to, technical specifications, installation and operating instructions, and warranty information.

- d. Identify by name all websites, magazines, trade publications, and any other media in which TBR advertised the component at any time since January 1, 2013.

Indicate whether the component is described by TBR in any documentation, marketing materials, advertisements, websites, or other media with the following statement or similar language:

"Two Brothers Racing products are intended for closed course competition purposes only, and therefore are sold 'as is' without warranty."

Provide references to all materials containing such statements.

- e. State the quantity that was manufactured by or for TBR during each year from January 1, 2013, through the date of this letter and identify the location(s) where the components were manufactured.
- f. State the quantity that was sold by TBR to consumers with shipping addresses in the United States during each year from January 1, 2013, through the date of this letter. Separately state the quantity sold to consumers in California and the quantity sold to consumers in the remaining 49 states.
- g. Provide copies of receipts for the total quantity of each component sold by TBR to consumers with shipping addresses in the United States during each year from January 1, 2013, through the date of this letter. Separate the receipts for components sold to consumers in California from the receipts for components sold to consumers in the remaining 49 states.
- h. State the quantity that was sold by TBR to wholesalers, distributors, or authorized dealers during each year from January 1, 2013, through the date of this letter.
- i. Provide copies of invoices or receipts for each component sold by TBR to all wholesalers, distributors, or authorized dealers during each year from January 1, 2013, through the date of this letter.
- j. Identify the name, address, contact person, and phone number of each wholesaler, distributor, and authorized dealer for which TBR provides an invoice or receipt in response to Question 2.j. For each entity identified, also identify the brand name under which each component is or has been marketed.

3. For each component identified in response to Question 1, state whether any tests have been conducted that measure the impact of the component on motor vehicle air pollutant emissions, or that measure the impact of the component on a vehicle's emission control devices or elements of design. For each such test, provide a description of the test (including identification of the component and vehicle, and the test protocol), specify the

date and location of the test, specify who conducted the test, and provide a copy of the test results.

4. Provide the name and address of each location where any of the components identified in response to Question 1 have been or currently are being stored or offered for sale by TBR.
5. Identify each component offered for sale by TBR during the period from January 1, 2013, through the date of this letter for the following types of vehicles:
  - Model year 2013 and later motorcycles that were originally designed and built by the motorcycle manufacturer for off-highway use.

The list of such components must include, but is not limited to, those identified on TBR's website at [www.twobros.com/MX.htm](http://www.twobros.com/MX.htm) and all related pages.

This request pertains to all components described herein regardless of any claims made by TBR that a particular component is designed for use in closed course competition and is not intended for any other use, or other similar claims.

6. For each component identified in response to Question 5, provide all of the information requested in Questions 2 through 4.
7. Identify each component offered for sale by TBR during the period from January 1, 2013, through the date of this letter for the following types of vehicles:
  - Model year 2013 and later all-terrain vehicles.

The list of such components must include, but is not limited to, those described on TBR's website at [www.twobros.com/ATV.htm](http://www.twobros.com/ATV.htm).

This Request for Information pertains to all components described herein regardless of any claims made by TBR that a particular component is designed for use in closed course racing and is not intended for any other use, or other such claims.

8. For each component identified in response to Question 7, provide all of the information requested in Questions 2 through 4.
9. Identify each fuel controller and other fuel or engine management products (collectively "EM products") offered for sale by TBR during the period from January 1, 2013, through the date of this letter. The list of EM products must include, but is not limited to, the following, which are listed on TBR's website at <http://www.twobros.com/FuelController.htm>:

- Juice Box
- Juice Box Pro

- Power Commander

10. For each EM product identified in response to Question 9:
- a. State the product number and identifying name, and specify the vehicle applications by make, model, and year.
  - b. Describe in detail what the product does and how it functions or operates.
  - c. Provide copies of all product documentation, including, but not limited to, technical specifications, installation and operating instructions, and warranty information.
  - d. Identify by name all websites, magazines, trade publications, and any other media in which TBR advertised the product at any time since January 1, 2013.

Indicate whether the product is described by TBR in any documentation, marketing materials, advertisements, websites, or other media with the following statement or similar language:

"Two Brothers Racing products are intended for closed course competition purposes only, and therefore are sold 'as is' without warranty."

Provide references to all materials containing such statements.

- e. State the quantity that was manufactured during each year from January 1, 2013, through the date of this letter and identify the location(s) where the products were manufactured. If the product was not physically manufactured and programmed by TBR, also provide the following information:
  - Identify the name and address of the manufacturer;
  - If different than the manufacturer, identify the name and address of the supplier from whom you purchased the product; and
  - Describe in detail the business relationship between TBR and i) the manufacturer, and ii) the supplier.
- f. State the quantity that was sold by TBR to consumers with shipping addresses in the United States during each year from January 1, 2013, through the date of this letter.
- g. Provide copies of receipts for the total quantity of the product sold by TBR to consumers with shipping addresses in the United States during each year from January 1, 2013, through the date of this letter.
- h. State the quantity that was sold by TBR to wholesalers, distributors, or authorized dealers during each year from January 1, 2013, through the date of this letter.
- i. Provide copies of invoices or receipts for each product sold by TBR to all wholesalers,

distributors, or authorized dealers during each year from January 1, 2013, through the date of this letter.

- j. Identify the name, address, contact person, and phone number of each wholesaler, distributor, and authorized dealer for which TBR provides an invoice or receipt in response to Question 10.k. Also state whether the entity markets or marketed the product under the TBR brand name.
  - k. Provide the name and address of each location where the product has been or currently is being stored or offered for sale by TBR.
11. For each EM product identified in response to Question 9, state whether any tests have been conducted that measure the impact of the product on motor vehicle air pollutant emissions, or that measure the impact of the product on a vehicle's emission control devices or elements of design. For each such test, provide a description of the test (including identification of the product and vehicle, and the test protocol), specify the date and location of the test, specify who conducted the test, and provide a copy of the test results.
  12. Provide a list of all persons (as defined in Exhibit D) that are affiliated with TBR. Describe the business relationships with these persons.
  13. Provide a copy of your articles of incorporation and by-laws.
  14. Identify each person responsible for responding to this Request for Information, including their title, and the request(s) to which they responded.

**EXHIBIT C**  
**INSTRUCTIONS**

1. This Request for Information is a continuing request. You must promptly supplement your response in the event you learn that you possess responsive documents or information not yet produced, or gain possession, custody or control of responsive documents or information after initially responding to this Request.
2. Provide responses to this Request for Information in English, using spreadsheet or word processing software (e.g., Word or Excel) or in PDF format, provided you have access to such software.
3. Where documents or information necessary for a response are not in your possession, custody, or control, indicate in your response why such information is not available or in your possession, custody or control, and identify any source that either possesses or is likely to possess such information.
4. All submitted documents should be copies and not original documents. Provide two complete sets of the requested documents and information (one set in hard copy form and the other set in electronic form).
5. Indicate on each document produced the number of the question to which it corresponds.
6. Where TBR has previously submitted to EPA information requested herein, re-submit the information in the format requested. Identify the material that was previously provided, the date on which it was provided, and the person at EPA to whom it was provided.
7. You must maintain an unaltered and complete copy of your website as it exists at the time this letter is received. This includes all pages, graphical elements, and text displayed on the website. You must provide this information in readable electronic format to EPA within ten days upon request.

## **EXHIBIT D**

### **DEFINITIONS**

1. All terms used in this Request for Information will have their ordinary meaning unless such terms are defined in the CAA, 42 U.S.C. §§ 7401 *et seq.*, or the regulations found at 40 C.F.R. Parts 85 and 86.
2. The terms “document” and “documents” means any object that records, stores, or presents information, and includes writings, memoranda, records, or information of any kind, formal or informal, whether wholly or partially handwritten or typed, whether in computer format, memory, or storage device, or in hardcopy, including any form or format of these. The term includes electronic mail and text messages. If in computer format or memory, each such document must be provided in translation to a form useable and readable by EPA, with all necessary documentation and support. All documents in hard copy also should include attachments to or enclosures with any document.
3. The term “person” includes an individual, corporation, partnership, limited liability company, sole proprietorship, joint venture, or any formal or informal entity, organization or association.
4. The terms “you” and “your” include Two Brothers Racing, Inc., and any affiliates, predecessors, successors, and assigns.
5. “Affiliate” or “affiliated” - used to indicate a relationship to a specified person, and means any person that, directly or indirectly or through one or more intermediaries, owns or controls, is owned or controlled by or is under common ownership or control with such person (other than entities serving solely as customs brokers).

# EXHIBIT E

## SAMPLE FORMAT FOR RESPONSE

Manufacturer	Model	Year	Component Name	Component Number
Mfg. 1	Model A	2009	V.A.L.E.™ Slip-on Exhaust System - M-2 Aluminum Canister	005-2630406V
			Black Series V.A.L.E.™ Slip-on Exhaust System - M-2 Aluminum Canister	005-2630406V-B
			V.A.L.E.™ Slip-on Exhaust System - M-2 Carbon Fiber Canister	005-2630407V
			Standard Mount SS Catalytic Eliminator - M-2 Aluminum Canister	005-920406HM
Mfg. 2	Model B	2010	V.A.L.E.™ Slip-on Exhaust System - M-2 Aluminum canister	005-1830406V
			Black Series V.A.L.E.™ Slip-on Exhaust System - M-2 Aluminum canister	005-1830406V-B
		2008	V.A.L.E.™ Slip-on Exhaust System - M-2 Aluminum canister	005-1830406V
			Black Series V.A.L.E.™ Slip-on Exhaust System - M-2 Aluminum canister	005-1830406V-B
		2009	V.A.L.E.™ Slip-on Exhaust System - M-2 Aluminum canister	005-1830406V
			Black Series V.A.L.E.™ Slip-on Exhaust System - M-2 Aluminum canister	005-1830406V-B
		2010	Black Series V.A.L.E.™ 4-2-1 Complete Exhaust Systems - M-2 Carbon Fiber canister	005-2420107V-B
		2011	Black Series V.A.L.E.™ 4-2-1 Complete Exhaust Systems - M-2 Carbon Fiber canister	005-2420107V-B
	Model C	2008	DUAL V.A.L.E.™ Slip-On Exhaust System - M-2 Aluminum canister	005-1930406DM
		2009	DUAL V.A.L.E.™ Slip-On Exhaust System - M-2 Aluminum canister	005-1930406DM

**EXHIBIT F**  
**CERTIFICATION**

You are submitting the enclosed documents in response to the U.S. Environmental Protection Agency's ("EPA") Request for Information, issued pursuant to Section 208(a) of the Clean Air Act, to determine compliance with the Clean Air Act and its affiliated regulations.

I certify that I am fully authorized by \_\_\_\_\_ [corporate affiliation] to provide the above information on its behalf to EPA.

I certify under penalty of law that I have examined and am familiar with the information in the enclosed documents, including all attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are, to the best of my knowledge and belief, true and complete. I am aware that there are significant penalties for knowingly submitting false statements and information, including the possibility of fines or imprisonment pursuant to Section 113(c)(2) of the Clean Air Act, 42 U.S.C. § 7413(c)(2), and 18 U.S.C. §§ 1001 and 1341.

Date: \_\_\_\_\_

Name (Printed): \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

**CERTIFICATE OF MAILING**

I, Cassandra Barnes, certify that I sent a Request for Information pursuant to the Clean Air Act by Certified Mail, Return Receipt requested, to:

Two Brothers Racing, Inc.  
401 South Grand Ave.  
Santa Ana, CA 92705

on the 8 day of December 2015.



Cassandra Barnes  
U.S. EPA

Certified Mail Receipt Number: 7008 3230 0000 9452 5336